IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY SECOND DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO: 24494 of 2004

Between:

D. Koteswara Rao, S/o. Late D. Subba Rao,
R/o. Near Harey Rama Asramam, Enamadugu Village & Post, Kovur Mandal,
Nellore District.

..... **PETITIONER**

AND

1 The Chief General manager, Bharat Sanchar Nigam Limited,
(Government of India Enterprise), Telecom A.P. Circle, Hyderabad.
2 The General manager, Bharat Sanchar Nigam Limited,
Nellore Telecom District, Nellore, Nellore District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue Writ or order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the first Respondent in rejecting the claim of the petitioner for compassionate appointment basing on the High Power "Committee opinion vide proceedings No.TA/STA(R)/13-069/2003, dated 15-7-2003, dated 15-7-2003 and proceedings No.TA/STA(R)/13-069/2003/6, dated 23-12-2003 is illegal, arbitrary and violative of Article 14 and 16 of the Constitution of India and consequently direct the Respondents to provide job of any group-D post on the ground of Compassionate appointment to the petitioner forthwith.

Counsel for the Petitioner: MR.J.M.NAIDU

Counsel for the Respondents: SMT.CHINTALAPUDI LAKSHMI KUMARI, S.C. for BSNL

The Court, at the stage of admission, made the following:

ORAL ORDER:

This writ petition is filed seeking a Mandamus to declare the action of the 1st respondent in rejecting the claim of the petitioner for compassionate appointment based on the opinion of the High Power Committee vide Proceedings No.TA/STA/®/13-069/2003, dated 15.7.2003 and Proceedings No.TA/STA®/13-069/2003/6, dated 23.12.2003 as arbitrary and illegal.

The brief facts that are necessary for the purpose of disposal of the writ petition may be stated as follows:

The petitioner's father was medically de-categorized due to amputation of left knee on 24.2.2001 and therefore, he was retired from service on 1.4.2001. Thereafter, the father of the petitioner died on 26.5.2002. The petitioner's mother made a representation to the respondents to appoint her son on compassionate grounds, but the same has been rejected. Challenging the same, this writ petition has been filed.

A detailed counter affidavit has been filed stating that the petitioner's father received a sum of Rs.1,23,644/- and after his death, family pension has been fixed at Rs.3,511/- and the High Power Committee after examining the case thoroughly taking into consideration all the factors, rejected the petitioner's case. As the petitioner's family is not in an indigent condition and they are having sufficient movable and immovable properties, the representation, dated 24.7.2003 made by the mother of the petitioner was rejected and hence, there are no grounds to allow the writ petition.

Heard the learned counsel for both the parties and perused the material on record.

The learned counsel for the petitioner has contended that the petitioner's family is in a distressed condition and though the retirement benefits are shown as Rs.1,23,644/-, the petitioner

received only Rs.31,699/- by way of Demand Draft, dated 2.7.2001 and that the family does not own any house, and the mother of the petitioner constructed a thatched house in Government Porambok land, and the Mandal Revenue Officer issued a notice under Section 7 of the Act 3 of 1905 that the petitioner's father incurred heavy debts for treatment and one of the creditors of his father got issued a legal notice for repayment of the debt. Hence, he prays to allow the writ petition.

The learned counsel for the respondents has contended that contrary to the circular instructions to give compassionate appointment to anyone of the members of the family, whose employment was medically invalidated, the High Power Committee, having taken note of the benefits that were given and also the pension and the size of the family, rightly rejected the petitioner's case and that order does not suffer from any incurable infirmities so as to call for interference by this Court.

The factual matrix is not in dispute. The petitioner cannot have any indefeasible right to ask the respondents to appoint him on compassionate ground. It is for the respondents to take appropriate decision. Unless that decision is vitiated by *mala fides* or without taking relevant facts into consideration, the same cannot be challenged. Even though the petitioner received only Rs.31,699/- towards pension benefits, the family consists of widow and the petitioner only. As seen from the counter, the family is receiving pension of Rs.3,511/- which, in due course, is likely to be enhanced because of implementation of the revised pay scales and that amount is sufficient for the maintenance of the family. When a family is in distressed condition consequent upon the death of an employee who was medically invalidated, one of the family members can be appointed on compassionate grounds. The High Power Committee which met on 3.6.2003 took note of the terminal benefits, the property, the liability and the size of the family into consideration, and rightly rejected the petitioner's case. It is not a case where the family is in a distressed condition after the medical invalidation. It is not a

case where the order under challenge is vitiated by *mala fides* or there is non-application of mind by the High Power Committee. There is no allegation in the writ petition that the father of the petitioner incurred heavy debts for medical treatment nor even a scrap of paper is filed to show that the father of the petitioner incurred heavy amounts for medical treatment, even otherwise, the family is getting nearly a sum of Rs.4,000/- per month and hence, it is not a case to direct the respondents to review the decision taken by the High Power Committee.

The writ petition is devoid of merits and is accordingly dismissed. In the circumstances of the case, there shall be no order as to costs.

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(K.C. BHANU, J.)

22-03-2005

bcj

To

1 The Chief General manager, Bharat Sanchar Nigam Limited,
(Government of India Enterprise), Telecom A.P. Circle, Hyderabad.
2 The General manager, Bharat Sanchar Nigam Limited,
Nellore Telecom District, Nellore, Nellore District.

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